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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,114	01/29/2004	Jerry F. Sullivan	COLT 20.873 (101402-00008)	4433
26304	7590	02/27/2006	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 02/27/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/767,114

Applicant(s)

SULLIVAN ET AL.

Examiner

Harry A. Grosso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) 26-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

The rejection of claim 14 under 35 U.S.C. 112, second paragraph has been overcome by the amendment filed November 17, 2005. The rejection is withdrawn.

***Election/Restrictions***

1. Newly submitted claims 26-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 26-28 recite a method of assuring mixing sequences which is not required by the original claims to a retaining device. The retaining device can accommodate containers fixed in a defined removal sequence without the need for mixing the contents of the containers in a defined sequence or at all. Iorio (3,527,345) is an example of such a retainer when used, for example for baby food.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Objections***

1. Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In claim 24 the wherein clause recites a first container filled with a material for dental work and a second container filled with another material. Examiner considers this to be intended use which

has no impact on the structure of the container arrangement of claim 21, therefore claim 24 is not further limiting with respect to claim 21 from which it depends.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-18, 21, 22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ransom (2,420,191) in view of Ibsen et al (4,256,603).

4. Claims 13, 14, 19, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iacono (4,037,766) in view of Ibsen et al (4,256,603).

5. Regarding claim 13, Ransom discloses a retaining device for at least two containers with a basic body (6, Figures 1-3), an accommodating opening for the containers (12, 13) and the device is designed for removal of the containers in a fixed sequence. Ransom does not teach containers filled with a material for dental restorative work. Ibsen et al discloses containers (14-18) filled with material for dental restorative work. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of containers filled with material for dental restorative work as disclosed by Ibsen et al in the retaining device disclosed by Ransom to use Ransom to provide a means for keeping the containers fixed in the sequence needed for use.

6. Regarding claims 14 and 17, Ransom discloses a retaining device with a slot as an accommodating opening for the containers (12, 13) and mounts (15, 16, 17, 18) for containers

7. Regarding claim 15, Ransom discloses the device is plastic (column 1, lines 27-33) that is resilient and allows the containers to be inserted and removed and held securely.

8. Regarding claim 16, Ransom discloses the device with a handle (20) that has gripping surfaces on the top, bottom and sides of the handle.

9. Regarding claim 18, Ransom discloses the device has profiles for securing the containers (15, 16, 17, 18, column 1, lines 48-55).

10. Regarding claim 21, Ransom discloses a container arrangement having at least two containers and a retaining device where the containers can be removed in a predeterminable sequence (Figure 1). Ransom does not teach containers filled with a material for dental restorative work. Ibsen et al discloses containers (14-18) filled with material for dental restorative work. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of containers filled with material for dental restorative work as disclosed by Ibsen et al in the retaining device disclosed by Ransom to use Ransom to provide a means for keeping the containers fixed in the sequence needed for use.

11. Regarding claim 22, Ransom discloses the container arrangement of claim 21 and that the retaining device accommodates the containers in a form fitting manner (column 1, lines 48-55).

12. Regarding claim 24, Ransom discloses the container arrangement of claim 21. The wherein clause recites a first container filled with a material for dental work and a second container filled with another material. Examiner considers this to be intended use, which has no impact on the structure of the container arrangement of claim 21.

13. Regarding claim 25, Ransom and Ibsen et al disclose a retaining device for at least two containers with a basic body of an elastic polymer material with an accommodating opening that can be widened for removal of a container and a first container has material for dental restorative work as discussed in the paragraphs above and the containers can only be removed in a predetermined sequence.

14. Regarding claim 13, Iacono discloses a retaining device for at least two containers with a basic body (10, Figures 1-2), an accommodating opening for the containers (14, 16, 18) and the device is designed for removal of the containers in a fixed sequence. Iacono does not teach containers filled with a material for dental restorative work. Ibsen et al discloses containers (14-18) filled with material for dental restorative work. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of containers filled with material for dental restorative work as disclosed by Ibsen et al in the retaining device disclosed by Iacono to use Iacono to provide a means for keeping the containers fixed in the sequence needed for use.

15. Regarding claim 14, Iacono discloses a retaining device with an accommodating opening for the containers and mounts (the edges of slots 14, 26, 18) for containers.

16. Regarding claim 19, Iacono discloses a standing surface (44).

17. Regarding claim 21, Iacono discloses a container arrangement having at least two containers and a retaining device where the containers can be removed in a predeterminable sequence (Figure 1). Iacono does not teach containers filled with a material for dental restorative work. Ibsen et al discloses containers (14-18) filled with material for dental restorative work. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of containers filled with material for dental restorative work as disclosed by Ibsen et al in the retaining device disclosed by Iacono to use Iacono to provide a means for keeping the containers fixed in the sequence needed for use.

18. Regarding claim 24, Iacono discloses the container arrangement of claim 21. The wherein clause recites a first container filled with a material for dental work and a second container filled with another material. Examiner considers this to be intended use, which has no impact on the structure of the container arrangement of claim 21.

19. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ransom and Ibsen et al as applied to claim 13 in view of Eliassen (4,022,363). Ransom and Ibsen et al disclose the invention except for the ability to prevent preliminary opening of the containers. Eliassen discloses a retaining device for containers with a shield over the top of the accommodating opening to protect the containers and prevent opening of the containers prior to removal from the retaining device (21, Figure 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a shield over the top of the accommodating opening as disclosed by Eliassen in the retaining devices disclosed by Ransom and Ibsen et al to

protect the containers and prevent opening of the containers prior to removal from the retaining device.

### ***Response to Arguments***

20. Applicant's arguments with respect to the non-entry of the amendment filed August 22, 2005 have been considered but are moot in view of the amendment filed November 17, 2005.

### ***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-




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4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Stephen K. Cronin**  
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Art Unit 3727

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